

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA A. JONES
Claimant

VS.

AUGUSTA MEDICAL COMPLEX
Respondent

AND

PHICO INSURANCE COMPANY
Insurance Carrier

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Docket No. 231,926

ORDER

Respondent appeals from a preliminary hearing Order rendered by Administrative Law Judge John D. Clark on May 21, 1998.

ISSUES

The jurisdictional issue raised on appeal is whether claimant's injuries arose out of and in the course of employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the argument, the Appeals Board concludes that the Order entered by the Administrative Law Judge should be affirmed.

Claimant alleges that she suffered injury arising out of and in the course of her employment on March 18, 1998, when an Alzheimer patient grabbed her right and left wrists and pulled and twisted them. Claimant alleges the injuries included traumatic bilateral carpal tunnel syndrome and a torn rotator cuff on the right shoulder.

Respondent disputes the claim principally on the grounds that the claimant's description of the accident is, according to respondent, improbable if not impossible. Respondent points to the fact that claimant is a significantly larger individual than the patient. Respondent also points to the absence of any reference of the right shoulder problems in the emergency care records for care provided following the incident.

The Appeals Board agrees the claimant's description of the accident is odd. However, it is essentially uncontradicted and is not, in our opinion, so improbable that it should be disregarded. The Board is also not persuaded benefits should be denied because there was no reference to shoulder problems in the written record. Those records of treatment immediately following the latest incident do suggest a possible fracture of the head of the radius. They reflect complaints indicating wrist sprain, elbow pain, tenderness in mid-scapular area, and a "pop" in her back when the patient grabbed her.

Based upon our review of the record as a whole, the Board concludes that claimant has met her burden and the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge John D. Clark on May 21, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Tamara Jo Pistotnik, Wichita, KS
Scott J. Mann, Hutchinson, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director